

ORIGINAL

JULY 17, 2003

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 03-03]

Amendment to Service Contract Regulations

AGENCY: Federal Maritime Commission.

ACTION: Final Rule

SUMMARY: The Federal Maritime Commission is amending its regulations on the electronic filing of service contracts for ocean transportation under the Shipping Act of 1984 (“Shipping Act”) (46 U.S.C. app. 1701 et seq.), as amended by the Ocean Shipping Reform Act of 1998 (“OSRA”), to add a provision which permits persons authorized to transmit electronically service contract filings for vessel-operating common carriers, conferences and agreements, to correct, within 48 hours, an original service contract filing or an amendment that is defective due to electronic transmission errors. The revision allows a “corrected transmission” of the original service contract or amendment submission to be designated as such and filed in the Commission’s electronic service contract filing system, SERVCON.

EFFECTIVE DATE: September 8, 2003

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission initiated this proceeding by a Notice of Proposed Rulemaking ("NPR") published in the Federal *Register* on April 2, 2003, 68 FR 15978. The NPR solicited comment on the proposed rule from the public. Three comments were received. Comments were submitted by Distribution-Publications, Inc. ("DPI") and Pacific Coast Tariff Bureau ("PCTB"), both tariff publishers. Attorney Howard Levy also filed a comment.

All of the comments were generally supportive of the proposed rule. Both tariff publishers endorsed the scope of errors to be corrected under the rule. The comments of DPI specifically noted that the 48-hour window to correct electronic transmission errors in service contract filings is the right amount of time for the correction process. The comments of PCTB also included a suggestion that the SERVCON system should be altered further to reintroduce the ability of a filer to completely withdraw a filed service contract or amendment that contains erroneous matter.

DISCUSSION

Section 8(c) of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), 46 U.S.C. app. 1707(c), and the Commission's current service contract regulations, 46 CFR Part 530, Subpart A, require service contracts between shippers and ocean

common carriers in the foreign commerce of the United States to be filed electronically with the Commission on a confidential basis. Only an “authorized person,” as defined in 46 CFR 530.3(c), can access the confidential section of the Commission’s electronic service contract filing system, SERVCON, available via the Commission’s website. Some carriers use individual employees as the authorized person to file their service contracts; however, the majority of carriers authorize third parties to make their service contract filings. The filings may consist of an original service contract or an amendment to an existing service contract.

Current regulations provide for the amendment, correction, and cancellation of service contract filings (46 CFR 530.10). This final rule will provide filers the ability to correct purely electronic “transmission errors” made when filing either the original service contract or an amendment to a service contract into SERVCON, or errors made in the process of converting the service contract filing into electronic format for submission to the SERVCON system.

Under this final rule only errors resulting from electronic transmission and data conversion for SERVCON format may be corrected. Examples of substantive service contract changes that are not permitted under the new 46 CFR 530.1 O(d) are: change of rates; deletion of a port or point to be served or a commodity to be carried under the contract; addition or deletion of a shipper entitled to access the service contract; and modification of the duration or minimum quantity commitment of the contract. This is not an exhaustive list, but instead serves as a specific example for general guidance. These and other similar types of changes should continue to be made as “amendments” under 46 CFR 530.10(b) or, if retroactivity is deemed necessary, by filing a request for permission to correct a clerical or administrative error in the terms of a filed service contract under 46 CFR 530.10(c).

Corrections to an initial filing are allowed within 48 hours from the time and date of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). For example, an initial filing received at 5:00 p.m. on a Friday must be corrected before 5:00 p.m. the following Tuesday. The SERVCON system currently has and will continue to have the ability to identify such corrected service contract filings. The Bureau of Trade Analysis will monitor the use of the correction process; any abuse of the limited permission in the rule would be considered a violation of the Commission's regulations.

Under this new rule, the SERVCON system will be modified to accept only corrected service contracts that the filer identifies as such and for which the filer provides a description of the changes being made by the correction process. A new field will be added to the online filing system as a **checkbox** for the filer to identify the submission as a corrected service contract. If the filer fails to use this new checkbox, the contract will be rejected because the SERVCON system will not accept service contracts that have duplicate file names or service contract or amendment numbers. The system also will flag resubmitted contracts and will give a unique internal file name to the corrected transmission for FMC monitoring purposes. A new separate SERVCON field for filers to enter a description of the corrections being made will be provided.

The Commission has determined that it will not add a "withdrawal" function to the final rule as recommended by PCTB. The Commission's previous Automated Tariff Filing and Information ("ATFI") system did have a "withdrawal" function that permitted a filer to withdraw a service contract filing containing erroneous matter on the same date that it was tiled and allowed the re-tiling of the appropriate copy. That "withdrawal" function was eliminated when the ATFI system was discontinued September 30, 1999. Presumably, filers have been accomplishing any needed

“withdrawals” of service contracts by filing an amendment to cancel an unintentionally filed document, which is permitted under 46 CFR 530.10(b). Therefore, even though the final rule does not permit reuse of the service contract number and tile name, or the complete withdrawal of an unintended contract filing as suggested by PCTB, the Commission does not believe it is necessary to add a separate “withdrawal” feature to the SERVCON system. The 48-hour window to correct a transmission error contained in the final rule, 46 CFR 530.10(d), adequately provides an opportunity for tilers to address erroneous service contract filings. For example, under the final rule the SERVCON system will accept a correction via the Corrected Transmission (“CT”) function to allow an erroneous service contract number, organization number, or document file name on an initial contract filing to be corrected.

List of Subjects in 46 CFR Part 530

Freight, Maritime carriers, Reporting and record keeping requirements.

For the reasons discussed in the preamble, the Commission is adding a new paragraph (d) in 46 CFR Part 530, Subpart B, section 530.10, as follows:

PART 530 - - SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.


2. Section 530.10 is amended by revising the section heading; by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) and by adding a new paragraph (d) to read as follows:

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(d) *Electronic transmission* errors. An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting a service contract filing or an amendment thereto is permitted to file a Corrected Transmission (“CT”) of that filing within 48 hours of the date and time of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). This time-limited permission to correct an initial defective service contract filing is not to be used to make changes in the original service contract rates, terms or conditions that are otherwise provided for in paragraphs 530.10(b) and (c) of this section. The CT tab box in SERVCON must be checked at the time of resubmitting a previously filed service contract, and a description of the corrections made must be stated at the beginning of the corrected service contract in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, since documents with duplicate file names or service contract and amendment numbers are not accepted by SERVCON.

By the Commission.



Bryant L. VanBrakle
Secretary